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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Applications of)

JEFFERY SCOTT)

File No. BPH-910213ME

EICHER COMMUNICATIONS, INC.)

File No. BPH-910213MF

For Construction Permit for)
new FM station on Channel 278)
at Bethany Beach, Delaware)

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FM EXAMINERS

To: The Chief, Mass Media Bureau

SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

EICHER COMMUNICATIONS, INC. ("Eicher") and JEFFERY SCOTT ("Scott"), ^{1/} hereby supplement the "Joint Request for Approval of Settlement," filed July 31, 1991 by the Joint Parties (the "Joint Request").

1. Appendix 1 hereto contains an executed copy of the Agreement between Eicher and Scott, which copy has been initialed and signed by Eicher's President, Elaine C. Eicher. Appendix 1 of the Joint Request contained only the signature of Scott.

2. In footnote 2 of the Joint Request, the Joint Parties noted that as a result of a typographical error, the pagination of the Agreement between Scott and Eicher had been changed after Eicher's principal had signed the Agreement, which required her to re-execute the Agreement. However, the re-executed copy could not be obtained by counsel for Eicher before the close of business on July 31, 1991.

^{1/} Collectively, hereinafter the "Joint Parties."

3. In footnote 2 of the Joint Request, the Joint Parties also noted that Eicher had approved the Agreement in final form and that they would file the signature page executed by Mrs. Eicher when received. Further, the Joint Parties included Mrs. Eicher's signed Declaration required by Section 73.3525 of the Rules, which referenced her approval of the Agreement.

WHEREFORE, in light of the foregoing, Eicher and Scott respectfully request that the Commission (1) grant this Joint Petition and (2) approve the Agreement contained in Appendix 1.

Respectfully submitted,

EICHER COMMUNICATIONS, INC.


By: 

Stephen Diaz Gavin
BESOZZI & GAVIN
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 293-7405

Its Counsel

JEFFERY SCOTT

By: 

Dennis P. Corbett
Stephen D. Baruch
LEVENTHAL SENTER & LERMAN 
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

His Counsel

Dated: August 5, 1991
0745/jointsup.mot

APPENDIX 1

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AGREEMENT

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
AUG 6 1991
AUG 6 1991

This Agreement is made this 31st day of July, 1991, by and between Eicher Communications, Inc. ("Eicher"), a Delaware corporation, and Jeffery Scott ("Scott"), an individual residing in the State of Delaware (collectively hereinafter the "Parties").

WHEREAS, Eicher has an application pending before the Federal Communications Commission ("FCC" or the "Commission"), FCC File No. BPH-910213MF, for authority to construct a new FM radio station on Channel 278 at Bethany Beach, Delaware (the "Station"); and

WHEREAS, Scott has filed a mutually exclusive application, FCC File No. BPH-910213ME, for the same Station; and

WHEREAS, Eicher and Scott are the only mutually exclusive applicants for the Station; and

WHEREAS, on June 17, 1991, Eicher filed a "Petition to Dismiss or Deny" Scott's application for the Station (the "Petition"), to which Scott has filed an Opposition, dated July 2, 1991, and Eicher, in turn a Reply pleading, dated July 15, 1991, and

WHEREAS, the Parties anticipate that the Petition and the responsive pleadings will be acted upon by the Commission prior to or in conjunction with the designation of the applications for hearing; and

WHEREAS, the Parties wish to avoid extended and costly legal proceedings before the Commission, which impose burdens on the Commission's staff and resources, as well as require the expenditure of considerable resources by both Eicher and Scott; and

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WHEREAS, the Parties can agree to a resolution of their differences on the basis of the terms and conditions set forth below which will involve the dismissal of either application and grant of the other; and

WHEREAS, Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. §311(c), and Section 73.3525 of the Commission's Rules, 47 C.F.R. §73.3525, require the prior approval of the Commission whenever one applicant will dismiss its application for consideration;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Dismissal of Scott's Application. In the event that the Commission or its delegated authority grants Eicher's Petition, Scott shall dismiss his application, as set forth in Paragraphs 4 and 5 below and further agrees not to file an appeal, reconsideration or review of the grant of the Petition and dismissal or denial of his application. A failure of the Commission to dismiss or deny Scott's application in ruling upon Eicher's Petition shall be treated as dismissal or denial of Eicher's Petition.

2. Dismissal of Eicher's Application. In the event that the Commission or its delegated authority denies Eicher's Petition and designates both the Scott and the Eicher applications for comparative hearing, Eicher will not file a notice of appearance

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and further agrees that Eicher will dismiss its application, as set forth in Paragraphs 4 and 5 below and not seek appeal, reconsideration or review of the adverse decision on Eicher's Petition.

3. Settlement Payment.

a. In consideration of the dismissal of Scott's application pursuant to Paragraph 1, supra, Eicher agrees to pay Scott the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00).

b. In consideration of the dismissal of Eicher's application pursuant to Paragraph 2, supra, Scott agrees to pay Eicher the sum of Thirty-Five Thousand Dollars and No Cents (\$35,000.00).

4. Conditions for Settlement Payment by the Prevailing Applicant. The party that dismisses its application pursuant to either Paragraph 1 or 2 of this Agreement shall be referred to as the "Dismissing Applicant." The party that does not dismiss its application, in accordance with the terms and conditions of this Agreement shall be referred hereto as the "Prevailing Applicant." Payment of the Settlement Payment by the Prevailing Applicant to the Dismissing Applicant shall be expressly conditioned upon the following:

a. The issuance by the Commission or its delegated authority of the decision that grants, denies or dismisses Eicher's Petition (the "Decision").

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b. No later than five (5) days from the "public notice" of the Decision, as that term is defined by Section 1.4 of the Rules and Regulations of the Commission, 47 C.F.R. §1.4, the receipt by counsel for the Prevailing Applicant of the "Request for Dismissal" from the Dismissing Applicant provided for in Paragraph 5 below, which copy of the Request shall bear the stamp of the Office of the Secretary of the FCC as having been received.

No later than five (5) days from the receipt by counsel for the Prevailing Applicant of the "Request for Dismissal" referred to in Subparagraph (b), counsel for the Prevailing Applicant shall deposit the Settlement Payment in his law firm's escrow account. Counsel for the Prevailing Applicant shall immediately notify counsel for the Dismissing Applicant that the Settlement Payment has been deposited in the escrow account. No later than five (5) days after either the "Request for Dismissal" or the grant of the Prevailing Applicant becomes a "final" action, i.e., an action pursuant to the rules and regulations of the Commission that is no longer subject to appeal, reconsideration or review, whichever occurs first, counsel for the Prevailing Applicant shall deliver the Settlement Payment in a certified check to counsel for the Dismissing Applicant. Interest accrued on the Settlement Payment shall be refunded to the Prevailing Applicant.

5. Request for Dismissal. Eicher and Scott each agrees to file a "Request for Dismissal" in the form set out in Attachment 1 hereto in the event that either is the Dismissing Applicant. The Parties agree that prompt delivery to the Commission of a

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"Request for Dismissal" by the Dismissing Applicant is necessary to conserve the resources otherwise spent in connection with a comparative hearing. Accordingly, concurrently with the execution of this Agreement, Scott and Eicher shall each execute but not date a "Request for Dismissal" in the form contained in Attachment 1 hereto. In the event that the Prevailing Applicant has not received the "Request for Dismissal" provided for in Section 4(b) above signed and dated by the Dismissing Applicant within five (5) days of the Release Date of the Decision, Eicher and Scott authorize each other, whichever is the Prevailing Applicant, to date the previously executed "Request for Dismissal" for the Dismissing Applicant, file such Request with the Secretary of the FCC, and deliver a copy thereof date stamped by the Secretary's Office, together with the Settlement Payment to the Dismissing Applicant.

6. As soon as possible after the execution of this Agreement, but in no event later than July 31, 1991, the Parties shall file this agreement with the Commission, together with a joint request pursuant to Section 73.3525 of the Commission's Rules for Commission approval of this agreement and of all of the obligations of the Parties set forth herein, and together with all supporting documentation required by Section 73.3525 of the Commission's Rules, specifically the "Declarations," copies of which are Attachment 2 hereto.

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7. This agreement is entered into subject to approval by the Commission. If the Commission conditions its approval or declines to approve any provision of this agreement, the Parties agree to proceed in good faith to resolve any Commission conditions or objections so as to secure approval of an agreement which most nearly reflects the original intentions of the parties as reflected herein. In the event final approval is not secured, this Agreement is null and void.

8. Eicher and Scott agree to cooperate with each other and with the Commission by expeditiously providing each other or the Commission, or both, with any additional information which may reasonably be required, by expeditiously filing any additional documents which may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules or to effectuate the objectives of this agreement, and by warranting that it will take no position inconsistent with the terms of this agreement or with the prompt finality of approval thereof.

9. This agreement is the only agreement between the Parties and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. No additional consideration has been or will be promised to be paid to any of the Parties. This Agreement shall be binding upon the parties hereto, the principals of the parties, their successors and assigns.

10. Eicher hereby warrants and represents that the action

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taken by its signatory below in executing this Agreement is a lawful action warranted and approved by Eicher and its shareholder.

11. The Parties agree that this agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument. However, each Party shall deliver to the other Party an original signature "Request for Dismissal" provided for by Paragraph 5 within five (5) days of the execution of this Agreement.

12. This agreement shall be construed under the laws of the State of Delaware.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first written above.

EICHER COMMUNICATIONS, INC.
a Delaware corporation

By: Elaine C. Eicher
Elaine C. Eicher, President

JEFFERY SCOTT

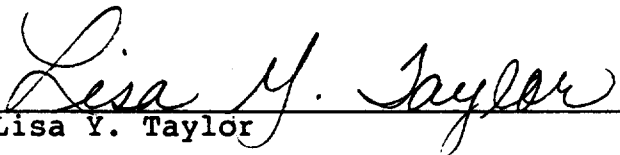
Jeffery Scott

CERTIFICATE OF SERVICE

I, Lisa Y. Taylor, a partner in the law firm of Besozzi & Gavin, do hereby certify that I have, on this 5th day of August, 1991, sent the foregoing "SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT" by U.S. mail, first class, postage-prepaid, to the following:

Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. Room 302
Washington, D.C. 20554

Dennis P. Corbett, Esquire
Leventhal Senter & Lerman
2000 K Street, N.W. Suite 600
Washington, D.C. 20006
Counsel to Jeffery Scott



Lisa Y. Taylor